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ABSTRACT

Licensing authorities for proprietary schools are faced with a number of issues in the regulation of institutions, including determining whether all institutions covered by state statutes have obtained a license. Robert V. Bullock is Assistant Attorney General of the state of Kentucky and as such offers suggestions for the enforcement of state statutes governing licensing of proprietary schools, including prosecution of individuals who deceive the consumer. Several common deceptive practices are outlined such as claims of high salaries earned by graduates, and easy job placement in the industry. Licensing authorities must function as regulators for the protection of the consumer. (JMF)

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REMARKS ON CONSUMER PROTECTION ISSUES

by

Robert V. Bullock
Assistant Attorney General
State of Kentucky

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I am pleased to be here at Keystone, Colorado, and believe that this conference can have worthwhile and lasting benefits. My remarks will concern more directly those delegates involved in the licensure of proprietary schools.

It would appear that a number of issues are facing the licensing authorities for proprietary schools. First and foremost is the question of whether all proprietary schools that fit under state statutes in fact have obtained a license. If a proprietary-type school has not even obtained a license, it may be difficult or impossible from a practical point of view to enforce your laws. Consideration might be given to the amendment of statutes so as to require an affirmative statement of a licensee's number in all advertisements for proprietary schools. Such an affirmative requirement would aid in the speedy determination as to whether advertisers fit under a licensure act and were or were not in fact licensed. While this idea has not been tried in Kentucky's Proprietary School Act (KRS 163.310), such a requirement has been enacted into law in Kentucky's Going-Out-Of-Business Statute (KRS 365.455) with satisfying results.

In my judgment, schools and educational-type institutions falling within the perimeter of your licensing authority can be grouped generally into two categories. First are the crooks. People who promise service and produce nothing might fall into this category. It would appear that the best remedy for the out-and-out crooks would be the use of criminal laws. The effective use of a little "jail time" for the crooks will save a lot of heart aches and headaches in the future. In applying such criminal sanctions, coordination and cooperation should be given among and between the license authority, the state attorney general, and the local prosecutor.

The most difficult problem involves the quasi-legitimate or legitimate

proprietary or educational institution. Those institutions may generally abide by the law but occasionally or, in some instances, with frequency engage in unfair false, misleading, or deceptive practices. Many times the individuals who are in such schools may be prominent members of the community. However, it is my conviction that the law must be applied equally to all persons whether prominent or not.

There are a number of practices which may be deceptive which appear to be endemic to proprietary schools.

First and foremost is the question of earnings claims which are given to consumers. Many times the consumer is told that he will make a high salary after taking the course of instruction when in truth and in fact, many times such earnings claims are not typical, usual or regular for entrance into this field of endeavor. It would appear that a licensing authority will be totally justified in regulating a licensee to substantiate any earnings claims in order to determine whether such earnings claims are exaggerated. Obviously, if only one individual in one hundred graduates make the high-sounding salary, such earnings are not typical and would be misleading.

Similarly, many times individuals are given the false impression that graduates of these schools will find speedy employment in industry as a result of the training. If, in truth and in fact, the proprietary school knows that the vast majority of their graduates cannot find employment in their field of endeavor after graduation, such advertising may be deceptive and therefore actionable by the licensing authority. It would appear that the licensing authority in such instances would be fully justified in requiring the licensee to show the percentage of individuals who have failed to find employment or satisfactory earnings as opposed to those who have been successful.

In determining whether a particular practice violates those provisions of the licensing statutes which generally prohibit misleading or deceptive practices, the licensing authority should have a clear idea of what is misleading or deceptive. Generally, deception can be defined as a lie. There are different kinds of lies. If someone indicates that a product is made out of gold when in fact it is not, such a representation is obviously a lie and, just as obviously, deceptive. Practices that are just as misleading or deceptive but which are not as easily ascertainable are those practices in which an individual or company engages in "material non-disclosure." "Material non-disclosure" involves the selling of a fine-looking bull for breeding purposes, but in which the seller knows that, in fact, the bull is sterile. I doubt if you will have any "sterile bull" cases involving the schools and institutions you regulate, however, the principle involved can be used in defining deception.

There are other miscellaneous-type problems which proprietary schools and their regulators often have to face. Many times an over zealous salesman promises the consumer that, if he will just sign the paper, he can later cancel the contract when, in truth and in fact, either the company or the salesman know that they will refuse to honor this commitment. Sometimes an over zealous salesman may raise unrealistic expectations in individuals such as in one case which we had in Kentucky in which a young woman was mildly retarded and yet was led to believe that she could successfully complete a highly technical course such as a data processing operator. Although these last two instances are difficult to prove and may not always be deceptive, they are nevertheless problems which the regulators must be prepared to deal with.

Most state attorneys are involved directly or indirectly in the problems associated with proprietary schools. Most states have a consumer protection division which operates under the direction of the attorney general and such statutes usually prohibit unfair, misleading or deceptive practices. In some states, the attorney general must yield to any other state authority who has jurisdiction in a particular field. In such states, cooperation and coordination with the attorney general's office might on the surface appear to be more difficult. In my judgment, however, these problems are more theoretical than real since a good faith attempt on the part of both the attorney general and the licensing authority can usually break down bureaucratic barriers. The better consumer protection laws in the states allow the attorney general to investigate and sue companies and individuals regardless whether there are other statutes or regulating authorities within the state involved with a particular industry or commerce. As I noted before, in my judgment it is most important that the licensing authority, the attorney general, and the local prosecutor work together by pooling their resources to insure proper investigation and resolution of violations of law.

An issue which has been raised at this conference, but which has not been resolved, is the question of whether the licensing authority represents consumers or whether their function is to promote proprietary schools and educational institutions. In my judgment, the answer to that question is obvious. Your function is that of a regulator and, as such, your chief function is to determine whether the laws are being complied with by those you regulate and, if not, to insure that they are. The greatest pitfall that regulators of particular industries can fall into is to become captives of the industry they regulate. There is a growing sentiment on both the federal and state level to decrease and abolish bureaucracies. It would appear that regulators of proprietary schools must make it abundantly clear that they are engaged in protection of the consumer and are not promoters of those they regulate in order for such agencies to survive the growing trend of abolishment and reduction of state and federal bureaucracies.

There has also been a suggestion made that, while the regulators should generally keep an eye on the proprietary schools, the best form of regulation is "self regulation." In my judgment, self-regulation does not work. Those that are honest, will be honest and those that are not honest, don't give a damn what their peers think. Self-regulation is much easier when those that are regulated are assured that, if they step out of line, there will be quick, effective action by a state agency to stop improper actions; and that, if the facts warrant, the regulator will have no hesitancy to put the offending party out of business.

All state and federal agencies must constantly re-examine and re-evaluate their objectives and their concepts. What was good for the situation of yesterday, may not be always good for the situation of today. State agencies must be prepared to justify their continued existence. If they cannot justify such existence, they should be abolished so that the taxpayers' monies will not be needlessly spent. I am very pleased that this organization has decided to examine and re-examine the objectives of their existence, and I am certain that such evaluations will provide for better protection of the public. In my judgment, it is important for us to explore the possibility of a close working relationship between your organization and the assistant attorneys general involved in consumer protection with the National Association of Attorneys General. I look forward to working with you in such a relationship and again I thank you for inviting me to this meeting.